

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONTAE MATHIS,

Plaintiff,

v.

DIRECTOR OF ACCOUNTING NDOC,

Defendant.

Case No. 2:23-cv-00874-RFB-EJY

ORDER

Plaintiff Dontae Mathis brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. (ECF No. 7). On December 12, 2023, this Court ordered Mathis to file an amended complaint by February 2, 2024. (ECF No. 6). The Court warned Mathis that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.* at 7). That deadline expired and Mathis did not file an amended complaint, move for an extension, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. See In re Phenylpropanolamine Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting Malone v. U.S. Postal Serv., 833

1 F.2d 128, 130 (9th Cir. 1987)).

2 The first two factors, the public's interest in expeditiously resolving this litigation and the
3 Court's interest in managing its docket, weigh in favor of dismissal of Mathis's claims. The third
4 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of
5 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
6 or prosecuting an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
7 factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by
8 the factors favoring dismissal.

9 The fifth factor requires the Court to consider whether less drastic alternatives can be used
10 to correct the party's failure that brought about the Court's need to consider dismissal. See Yourish
11 v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
12 alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord
13 Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
14 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
15 prior to disobedience of the court's order as satisfying this element[,]” *i.e.*, like the “initial granting
16 of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been
17 “eroded” by Yourish). Courts “need not exhaust every sanction short of dismissal before finally
18 dismissing a case, but must explore possible and meaningful alternatives.” Henderson v. Duncan,
19 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
20 unless Mathis files an amended complaint, the only alternative is to enter a second order setting
21 another deadline. But the reality of repeating an ignored order is that it often only delays the
22 inevitable and squanders the Court's finite resources. The circumstances here do not indicate that
23 this case will be an exception: there is no hint that Mathis needs additional time or evidence that
24 he did not receive the Court's screening order. Setting another deadline is not a meaningful
25 alternative given these circumstances. The fifth factor favors dismissal.

26 However, the Court permits Plaintiff Mathis to file a motion to reopen the action by
27 showing good cause as to why Plaintiff missed the February 2, 2024, deadline to file an amended
28 complaint. See Fed. R. Civ. Pro. 60.

II. CONCLUSION

Having thoroughly considered these dismissal factors, the Court finds that they weigh in favor of dismissal. It is therefore ordered that this action is dismissed without prejudice based on Mathis's failure to file an amended complaint in compliance with this Court's December 12, 2023, order. The Clerk of Court is directed to enter judgment accordingly and close this case. If Mathis wishes to pursue his claims, he must either file a complaint in a new case or a motion to reopen this action for good cause shown.

It is further ordered that Mathis's application to proceed *in forma pauperis* (ECF No. 5) is denied as moot.

DATED: February 29, 2024.



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE